

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeals of }
ROBERT S. MEANS } ,

For Appellant: Robert S. Means,
in pro. per.

For Respondent: Vasio Gianulias
Counsel

O P I N I O N

These appeals are made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protests of Robert S. Means against proposed assessments of additional personal income tax and penalties in the total amounts of \$1,013.43 and \$1,603.53 for the years 1976 and 1978, respectively.

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Although appellant filed timely California personal income tax return Forms 540 for the taxable years 1976 and 1978, those forms contained no information regarding his income or allowable deductions and credits. In the spaces provided for such financial data, **appellant wrote** "5th Amend. Object." Respondent advised appellant that the Forms 540 which he had submitted did not constitute valid returns and demanded that he file a proper return for each year within 20 days. When appellant did not comply, respondent estimated his income for 1976 (\$14,700.00) on the basis of income figures available for 1975 and 1977. The 1978 assessment was based upon information obtained from appellant's employer, Four Phase Systems, Inc., indicating that it had paid appellant \$19,411.60 in 1978. The proposed deficiency assessment for each year included penalties for failure to file a timely return, failure to file upon notice and demand, negligence, and failure to pay estimated tax. Appellant's protests against the assessments were denied and these timely appeals followed.

On September 11, 1979, appellant submitted a return for 1976, reporting his gross income as "1,867 FRN" (Federal Reserve notes) and claiming a refund of "78 FRN," consisting of a renter's credit and California personal income tax withheld. Based upon information provided by appellant, respondent now concedes that the proposed assessment of tax and penalties for 1976 is erroneous and respondent is prepared to withdraw it. We understand that appellant entered into a partnership which suffered a loss in that year and he returned to his former employer late in 1976. Respondent has no record of ever having received a valid return from appellant for 1978.

This is the second time appellant has come to this board requesting that we reverse respondent's determination of his California personal income tax liability. The earlier appeal involved deficiency assessments of tax and penalties for 1974 and 1975. (Appeal of Robert S. Means, Cal. St. Bd. of Equal., Jan. 9, 1979.) The facts and issues were substantially the same as those before us now and there, as here, appellant argued basically that he owed no tax because Federal Reserve notes are not "money" or legal tender. We had no difficulty sustaining respondent's assessments for those earlier years in their entirety. On the basis of that decision, and for the reasons stated therein, we likewise conclude that respondent's action with respect

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to the proposed assessment for the year 1978 must be sustained.

Since these appeals were filed, appellant has submitted evidence establishing that California personal income tax in the amount of \$45.46 was withheld from his salary in 1978, so a credit should also be allowed against the amount of the assessment for that year. Appropriate adjustments to reflect the amount of withholding will also have to be made in the penalties imposed in 1978 for failure to file a timely return and for failure to pay estimated tax.

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O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and **Taxation** Code, that the action of the Franchise Tax Board on the protest of Robert S. Means against a proposed assessment of additional personal income tax and penalties in the total amount of **\$1,013.43** for the year 1976, be and the same is hereby reversed, and that the action of the Franchise Tax Board **on the** protest of Robert S. Means against a proposed assessment of additional personal income tax and penalties in the total amount of **\$1,603.53** for the year 1978, be and the same is hereby modified in that a credit shall be allowed against the proposed assessment of additional tax for that year to reflect the amount of California personal income tax withheld, and the amount of the penalties imposed for failure to file a timely return and for failure to pay. estimated tax shall be reduced to reflect such withholding. In all other respects, the action of the Franchise Tax Board is sustained.

Done at Sacramento, California, this 19th day of **May**, 1981, by the State Board of Equalization, with all **Board** members present.

Ernest J. Dronenburg, Jr., Chairman

George R. Reilly, Member

William M. Bennett, Member

Richard Nevins, Member

Kenneth Cory, Member